Virginia Law Register

Vol. 7, N. S.] OCTOBER 1921. [No. 6

PRICE REGULATION BY LEGISLATIVE POWER.*

Price fixing has come to have a fair library of its own literature, most of it easily accessible to all. We shall assume all are acquainted with it. A point upon this subject ought, however, in the opinion of your executive council, to be made now to the assembled Bench and Bar to get for it your timely joint consideration. It is that point that I am about to present for general discussion.

But, now, that the Great War is over, that point will not go to the whole subject but only to Price Regulation by Legislative Power in time of peace excluding Legislative War Power to Fix Prices.

"Price Regulation by Legislative Power" involves the old and still largely unanswered question: What is the line of demarcation between property which is private only and property popularly considered as private but in law considered as so affected with a public interest that it ceases to be private only, the latter, not the former, being within the legislative price fixing power.

This question, in inarticulate sections, has been answered in many specific instances by exhibiting sections of the line well within the instant facts and by deductions of general principle, but has been in other instances and at the same and at other points much beclouded by judicial statements in such loose and lazy language as, in Senegambian phrase, to make the darkness more visible.

As every one knows, price regulation by legislative power is as old as the law of usury and young as the last legislative session or Public Service Commission sitting, whichever last hap-

*A paper read by Edward Grandison Smith of Clarksburg, W. Va. before The West Virginia Bar Association at Charleston, W. Va., or July 28th, 1921.

pened, in this republic of many republics, each with a legislature of its own and each with a public service commission of its own.

During all the time there has been more or less striving after this line of demarcation between right, private only, and right, private but affected with a public interest,—more or less sallying forth and peering into the midnight No Man's Land for this line, section by section.

Thus, only, slowly, such "lines are pricked out by the gradual approach and contact of decisions on the opposing sides".

What we propose now to do is to examine what has been done towards disclosing a general principle by which the above question may be roughly answered.

And, to this end, first let us recall and hold in mind during this discussion the distinct ways in which our property is held:

1. By the public; as government buildings, or as navigable waters and other highways;
2. By private individuals; as residences, farms and the like; and
3. By both, the public and private individuals in a dual interest; individuals holding the deeds and devoting to the public a social interest, a certain irresponsible, but interested, control; as public utilities and all other private properties "affected with a public interest"

The first class of property is, of course, out of the discussion. We are concerned here with the other two classes.

Legislative power to fix prices of the second class, we think, does not exist.

Legislative power to fix prices of the third class we do not doubt.

But when is property within one class or the other? That is the question. It is one of classification. What is the principle of classification? The problem is to find that principle. The whole inquiry narrows down to just that. The principle of classification ought not to be arbitrary or artificial. It should be natural,—founded in the facts of nature. And to be of value it must be certain, not mathematically certain, but rea-

sonably certain and workable,—not a mere rule of thumb, the tyrant's best tool,—still a menace to justice and to republics.

Looking into the nature of the second class, private property, we find it is founded in justice and necessity.

John Quincy Adams, in 1802, in his Plymouth oration, said:

> "Another incident, from which we may derive occasion for important reflections, was the attempt of these original settlers to establish among them that community of goods and labor, which fanciful politicians, from the days of Plato to those of Rousseau, have recommended as the fundamental law of a perfect republic. This theory results, it must be acknowledged, from principles of reasoning most flattering to the human character. If industry, frugality, and disinterested integrity were alike the virtues of all, there would apparently be more of the social spirit, in making all property a common stock, and giving to each individual a proportional title to the wealth of the whole. Such is the basis upon which Plato forbids, in his republic, the division of property. Such is the system upon which Rousseau pronounces the first man who enclosed a field with a fence, and said, this is mine, a traitor to the human species. A wiser and more useful philosophy, however, directs us to consider man according to the nature in which he was formed; subject to the infirmities, which no wisdom can strengthen; to vices, which no legislation can correct. Hence, it becomes obvious, that separate exertion; that community of goods without community of toil is oppressive and unjust; that it counteracts the laws of nature, which prescribe, that he only who sows the seed shall reap the harvest; that it discourages all energy, by destroying its rewards; and makes the most virtuous and active members of society, the slaves and drudges of the worst. Such was the issue of this experiment among our forefathers, and the same event demonstrated the error of the system in the elder settlement of Virginia. Let us cherish that spirit of harmony, which prompted our forefathers to make the attempt, under circumstances more favorable to its success than, perhaps, ever occurred upon earth. Let us no less admire the candor with which they relinquished it, upon discovering its irremediable inefficacy. To found principles of government upon too advantageous an estimate of the human character, is an error of inexperience, the source of which is so amiable that it is impossible to censure it with severity."

In this oration the third class, private property affected with a public interest, is not noticed, but the common law considers that if justice and necessity by reason of certain infirmities of human nature are the foundations of private property, they are no less by reason of other infirmities of human nature the foundations of public regulation of such private property as may be affected with a public interest.

This third class is the bumper to keep too much property from being turned into the first class, more than human nature, owing to its said infirmities, can either justly or successfully or safely own in common in a representative democracy resting largely on competitions as a corner stone and it is the safety valve to let out of purely private ownership property which, owing to the infirmities of human nature, cannot be either justly or safely owned privately only competitions being, as to it, inoperative. Our property system, like our governmental system, is one of checks and balances.

The United States Circuit Court of Appeals for the Seventh Circuit, in the Indiana coal price fixing case, states the ground of the third class thus:

> "The evil to be cured is extortion and the remedy is price regulation. * * * Simply control of his property as an instrument in his hand, with which the Legislature has found that he has been bludgeoning the people." [1]

But in our system of competition the ground of the third class is narrower than this.

Price regulation of *all* property, like common ownership of all property, could result only "from principles of reasoning most flattering to the human character", "an error of inexperience".

Some two hundred and fifty years ago, Lord Hale stated and limited the principle of the third class as follows:

> "A man for his own private advantage may in a port town set up a wharf or cranage, and may take what rates he had and his customers may agree for cranage, wharfage,

1. American Coal Mining Co. *v.* The Special Coal and Food Commission of Indiana, 268 Fed. 563.

> etc.; for he doth no more than is lawful for any man to do, viz., make the most of his own, etc.—'If the King or subject have a public wharf, unto which all persons that come to that port must come and unlade or lade their goods, as for the purpose, because they are the wharfs only licensed by the Queen, according to the st. 1 Eliz. c. 11, or because there is no other wharf in that port, as it may fall out where a wharf is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, etc., neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, though settled by the King's license or charter; for now the wharf and crane and other conveniences are affected with a public interest, and they cease to be juris privati only. And if a man set out a street in a new building on his own land, it is no longer bare private interest, but it is affected with a public interest.' "[2]

In England in 1810, Lord Ellenborough, in Allnutt *v.* Inglis,[3] said of this doctrine of Lord Hale, that it

> "includes the good sense as well as the law of the subject."

In America, in 1877, the Supreme Court of the United States, in Munn *v.* Illinois,[4] adopted the doctrine of Lord Hale, but it encountered difficulties unknown to the common law.

The problem in this country was to find some way to apply the doctrine of Lord Hale under our constitutions so as not to offend against the contract clause (Sec. 10, Art. 1), the commerce clause (Sec. 9, Art. 1), the equal protection of laws clause (14th Amendment), the due process clause (14th Amendment), and the eminent domain clause of the federal (Amendment 5) or state constitution, providing property shall not be taken for public use without just compensation.

For colonial Massachusetts, or colonial New York, or colonial Virginia to regulate the price of money, wages, bread, ferriage, mill tolls, wharfage, merchandise, books, twenty-one variously located fifty-acre tracts of land for tobacco warehouses and towns, sloop hire, the per cent gain on merchandise, and attor-

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2. Sir Matthew Hale's Ports of the Sea, 1 Harg. L. Tr. 17.
3. 12 East 527; 105 Eng. Repr. 206.
4. 94 U. S. 113, 24 L. Ed. 84. ("The Granger Cases.")

ney's fees, and for an omnipotent parliament, sitting as a perpetual constitutional convention, to regulate the price of wharfage, money, wages, coal, bread, books, ale, and other merchandise, on the one hand, was one thing, and for the Legislature of a state of this union, subject to the contract clause, the commerce clause, the due process clause, the equal protection of laws clause and the immunities clause of the Federal Constitution; and the eminent domain clause of the Federal Constitution; and of a state constitution to fix the price of elevating, insurance, wharfage, attorney's fees, pipe line transportation and rent, on the other hand, was quite another thing.

In our Munn case, supra, in the Supreme Court of the United States, which has been considered by some one of the greatest decisions of that great court, or any other, the Chief Justice for the majority met that feature of the situation as follows:

> "When, * * * one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created."

In the Weems case,[5] twenty-two years after the Munn case, Mr. Justice Peckham for the court restated the general proposition specifically as follows:

> "As you have devoted your property to a use in which the public has an interest, you have granted to the public an interest in that use, and the right, on the part of the state, to regulate charges which you shall make, to the end that they shall be just and reasonable."

In the Brass case,[6] sixteen years after the Munn case, Mr. Justice Shiras, for the majority, said:

> "We do not understand this law to require the owner of a warehouse, built and used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons

5. Weems Steamboat Co. *v.* Peoples Steamboat Co., 214 U. S. 355; 53 L. Ed. 1020.

6. Brass *v.* North Dakota, 153 U. S. 391, 38 L. Ed. 575. (Elevator.)

for profit. Then he becomes subject to the statutory regulations."

Mr. Justice Peckham, for the court in the Weems case, supra, also emphasized the point that the devotion of property to the public interest must be voluntary. He said:

"The only question is whether a third person has the right to use a private wharf on tendering reasonable compensation therefor, because there is no other wharf at the place, or because it would be more convenient to such third person to use it, or because the former owner of the wharf had permitted the public to use it, although the present owner refused to consent to such use. There is no more reason why such property should be held subject to the right of others to use it against the will of its owner than there is for any other kind of property to be so held."

In the pipe line case [7] last year, January 5, 1920, forty-three years after the Munn case, Mr. Justice VanDevanter, for the court, said:

"It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts and never was devoted by its owner to public use, that is, to carrying for the public, the state could not, by mere legislative fiat or by any regulating order of a commission, convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the Fourteenth Amendment. (Authorities cited.) On the other hand, if in the beginning or during its subsequent operation the pipe line was devoted by its owner to public use, and if the right thus extended to the public has not been withdrawn, there can be no doubt that the pipe line is a public utility and its owner a common carrier whose rates and practices are subject to public regulation."

In the Munn case, the Chief Justice having thus laid down a new principle for America and thereby disposed of the American constitutional question, he was then free to apply and he

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7. Producers Trans. Co. *v.* Railroad Commission, 251 U. S. 228, 40 Sup. Ct. 131.

did apply Lord Hale's principle, above quoted, and in doing so went one step further than Lord Hale and extended the principle of license and special privilege and monopoly to a point quite beyond them technically considered to monopoly "in the facts."

Subsequent cases [8] in the Supreme Court of the United States announce no new principle. They have only exhibited new facts and have passed on them as being within or without the principle announced by Lord Hale in his Ports of the Sea, as extended by Chief Justice Waite, and the said purely American principle announced by Chief Justice Waite, both in the Munn case. These two principles run right on through other elevator cases, the bank guaranty, the insurance, the wharf, the irrigation, the mining, the pipe line and the rent cases, without a departure.

On the one hand there was much dissent from the application of the principle of Lord Hale as extended by Chief Justice Waite. All the dissenting opinions coming to this: The law cannot see a monopoly out of uniform,—its ancient uniform in the time of Lord Hale; all the majority opinions with like

8. Northern Pac. R. R. Co. *v.* North Dakota. 250 U. S. 135, 139, 39 Sup. Ct. 502; Collins *v.* Texas, 223 U. S. 288, 32 Sup. Ct. 286 (Board of Medical Examiners—Osteopathy); Rast *v.* Van Deman, 240 U. S. 342, 36 Sup. Ct. 370, 60 L. Ed. 679; Strickley *v.* Highland Boy Mining Co., 200 U. S. 527 (Aerial bucket line); Tanner *v.* Little, 240 U. S. 369, 36 Supp. 379 (Special license tax upon merchants using profit sharing coupons and trading stamps); Chesapeake &c., Co. *v.* Manning, 180 U. S. 247, 22 Sup. Ct. 881, 46 L. Ed. 1144 (Telephone rates); Wilson *v.* New, 243 U. S. 332, 61 L. Ed. 755, 346, 347, 353-4; 37 Sup. Ct. 298, 1917D, 938, Ann. Cas. 1918A, 1024 (Adamson Law); Clark *v.* Nash, 198 U. S. 361 (Irrigation ditch); Noble State Bank *v.* Haskell, 219 U. S. 104, 55 L. Ed. 112 (Bank Guaranty); Oklahoma Operating Co. *v.* Love, 252 U. S. 331, 40 Sup. Ct. 338 (March 22, 1920 [Corporation Commission to fix rates of public business applied to laundry]); License Cases, 5 How. 583, 12 L. Ed. 256; Louisville & N. R. Co. *v.* West Coast Co., 198 U. S. 483, 49 L. Ed. 1135 (Wharf); Felsburg Power & Mfg. Co. *v.* Alexander, 110 Va. 98, 61 L. R. A. 129 (Public use); Budd *v.* New York, 143 U. S. 538, 36 L. Ed. 253 (Elevator); Terminal Taxicab Co. *v.* Kutz, 241 U. S. 252, 60 L. Ed. 984, 36 Sup. Ct. 538, Ann. Cas. 1916D, 765 (Taxicabs); American Surety Co. *v.* Shalenberger, 183 Fed. 636 (The business of surety and fidelity bonds); McLean *v.* Arkansas, 211 U. S. 539, 53 L. Ed. 315; Rail & River Coal Co. *v.* Yaple, 236 U. S. 338, 59 L. Ed. 607, 35 Sup. Ct. 359; Schmidinger *v.* Chicago, 226 U. S. 578, 57 L. Ed. 364 (Ordinance fixing price and weight of loaf of bread).

variety and detail coming to this: The law sees monopoly whether in its ancient uniform or in the plain clothes of the latest times.

On the other hand there has been no end of legislative endeavor to extend these principles so as to include first one then another class of properties theretofore unregulated and nonmonopolistic. One Legislature has included in its price fixing statute every property man uses from the cradle to the grave, in apparent sublime unconsciousness of the justice of and the natural necessity for purely private property. And, moreover, some courts, state and federal, seem to be, in assertion at least, if not in decision, as extreme as any legislature.

That legislative power to fix prices is limited to cases within the circle of monopoly in the facts, we think will appear from the briefest review of the great persuasive and binding authorities on the subject, although generally there is more than monopoly in the facts, viz.: some familiar *form* of monopoly, as special privilege, license or technical monopoly.

Lord Hale, as we have seen, predicates price fixing on special privilege or license or monopoly as causing private property to become affected with a public interest and to cease to be private only.

Lord Ellenborough, as we have seen, adopts Lord Hale's view and predicates his approval, in Allnutt *v.* Inglis, supra, of requiring prices to be reasonable, upon special privilege, license and monopoly.

Chief Justice Waite predicates his opinion for the majority in Munn *v.* Illinois, supra, not upon license or special privilege, or other technical monopoly, but upon what he calls "a virtual monopoly", not by the constitution of Illinois, nor by the statute of Illinois, but "by the facts". Thus the Supreme Court of the United States broke away from all artificial grounds, such as license, special privilege and technical monopoly, away from all beclouding, limiting and hindering form, and went to the very substance of the thing

In our German Alliance Assurance case,[9] Mr. Justice Mc-

9. German Alliance Ins. Co. *v.* Lewis, 233 U. S. 389, 58 L. Ed. 1011, 34 Sup. Ct. 612.

Kenna, for the majority, adheres to the Munn case and predicates the Court's judgment upon the ground:

> "That the price of insurance is not fixed over the counters of the companies by what Adam Smith calls the higgling of the market but formed in the councils of the underwriters promulgated in schedules of practically controlling constancy which the applicant for insurance is powerless to oppose and which therefore has led to the assertion that the business of insurance is of a monopolistic character."

Here again all the nice artificialties, the usual forms and trappings of monopoly, giving it visibility to the judicial eyes of other days, are put out of mind and the undecorated substance of monopoly appears and judgment is rested on substance alone.

As late as April 18th of the present year (1921), the Supreme Court, Mr. Justice Holmes speaking for the majority, in the Washington City rent case (Block *v.* Hirsh, 41 Sup. Ct. Rep.), said:

> "The space in Washington is necessarily *monopolized* in comparatively few hands, and letting portions of it is as much a business as any other. Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present."

In all these cases monopoly is not separate from price fixing. In all these cases the decision rests on monopoly.

So, our conclusion is that private property or private business which is affected with a public interest, and which is alone subject to "The Legislative Power to Fix Prices" is always somewhere within the circle of monopoly at the least, in the facts.

But the United States Supreme Court in the Brass case, supra, flew another kite, some have supposed. It is often asserted that in that case there was no license, no special privilege, and no monopoly. Even Freund in his treatise says:

> "But the requirement of a monopoly; legal or actual, as a justification for the legislative regulation of charges, was abandoned in Brass *v.* North Dakota, where the regulation

was upheld, although the grain elevator business in that state did not present any feature of monopoly."

And again:

"Where there is neither legal nor actual monopoly, the question of the power to regulate charges presents great difficulties. It seems impossible to deny the constitutional power in the fact of such a decision as Brass *v.* North Dakota and of the well-established limitation of rates of interest, and there seems, moreover, to be no case in which a reasonable regulation of charges has been declared unconstitutional on the ground that the legislature does not possess such power."

But in our opinion the Brass case rests on monopoly and on no other ground,—monopoly in the facts, if not in the facts written in the record of the case, then in the facts of elevating generally, of which judicial notice was taken. There the court simply took a large view. General practice in elevating disclosed in the Munn and Budd cases was more potent with the court than what the instant written record disclosed of the local practice in the then past of the new and developing North Dakota.

If, the infirmity of human nature considered, the general tendency and inherent character of the business where it and the locality reaches a state of ultimate development is monopolistic that is enough.

As Mr. Justice Shiras, for the majority, in the Brass case, says:

"When it is admitted, as it is admitted here, that it is competent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size and in some circumstances, it follows that such power may be legally exerted over the same business when carried on in smaller cities and in other circumstances."

This was a great sweep of policy. The court thereby forever relieved itself and the country from endless minute inquiry into local practice in different parts of the country during varying stages of local development, with now one and now

another interest in the ascendency, with reference to elevating, and to every other price fixing subject.

But if the Brass case, as misunderstood, inspires general anxiety for private property, what must be said of the expressions of principle in our two West Virginia cases, one gas and the other hydro-electric, decided October 7, 1919? [10]

If, in them, the opinions or the syllabi mean what their words considered alone seem to imply, the power to fix prices has no narrower limits than the "welfare of a substantial part of the public", as declared in the one case, or the general "convenience" or "prosperity", as announced in the other, monopoly or no monopoly.

This is a new doctrine for our Supreme Court of Appeals.

In the Screen and Scrip cases,[11] Judge Lucas stated the monopolistic basis of public interest as follows:

> "The principle seems to be that when a few persons are engaged in an extensive business, and they have a multitude of customers or dependent employees, and it appears that the business is of such a character that the parties do not deal upon an equal footing, and that the many are at a disadvantage in their contractual relations with the few, the legislature may regulate these relations, with a view to prevent fraud, oppression or undue advantage."

And Judges Brannon and English thought Judge Lucas and Judge Holt who concurred with him too liberal, and for that reason dissented.

The great members of the old court composed of Green, Snyder, Brannon and English, at the time of 33 West Virginia,[12] the subject being considered as not affected with a public interest, unanimously asserted the sacredness of private property and private business, and the liberty of contract against legislative interference and price regulation by the statute of 1887, in the language following:

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10. Clarksburg Light and Heat Co. *v.* Public Service Commission, 100 S. E. 551; Mill Creek Coal & Coke Co. *v.* Public Service commission, 100 S. E. 557.

11. State *v.* Peel Splint Coal Co., 36 W. Va. 802, 829, 834.

12. State *v.* Firecreek Coal & Coke Co., 33 W. Va. 188; State *v.* Goodwill, 33 W. Va. 179, 6 L. R. A. 621.

> "The statute is a Procrustean bed. It consigns all sizes and conditions to the same measure of treatment, regardless of their differences. It excludes all freedom in trade and all considerations of mutual benefit and even charity. * * * That it is an attempt to do for private citizens, under no physical or mental disabilities, what they can best do for themselves, is apparent. It selects miners and manufacturers, as a class and denies to them privileges which are not only proper and legitimate in themselves, but also to some extent necessary and unavoidable in the conduct of business; privileges which concern private affairs solely; and which are enjoyed by all other classes of citizens. It is an attempt on the part of the legislature to do what, in this country, cannot be done; that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the right of the employer and the employee. More than this, it is an insulting attempt to put the laborer under legislative tutelage, which is not only degrading to his manhood, but perversive of his rights as a citizen of the United States."

But the thing these sages of the law thought and from their great places greatly said could not be done in this country, their learned successors assert from the same bench may be done, provided only that it will be for the "welfare" of a substantial part of the public or for its "convenience" or "prosperity" unless it be understood they were speaking within the circle of monopoly.

This principle of monopoly in the facts is itself very wide in the opinion of some judges, but not so all encompassing as the words "inconvenience", "welfare" and "prosperity".

Fortunately, these utterances are, we think, unnecessary for the instant decision for each involved a public service corporation with the right of eminent domain and therefore each was monopolistic in the sense of that work in this paper. Unfortunately, however, these dicta,—although carried into the syllabi, we can call them nothing else,—are in accord with much modern legislative declaration and other state and federal court assertion, the cumulation of which swells their importance.

The radical legislative view culminates in the Montana price

fixing statute of August 11, 1919, of which the court, in the Hardware case,[13] said:

> "It ranges from the street corner vendor of popcorn and bananas to the merchant prince, from coal to diamonds, from the babe's first swaddling band and cradle to the aged man's shroud, his coffin, and his grave. Trifles, necessities, luxuries—all are within its scope."

The extreme judicial view was expressed in the Marcus Brown Holding Company (New York rent) case,[14] on December 15, 1920, as follows:

> "It may be and has been asserted that *any business is affected with a public interest as soon as the electorate become sufficiently interested in it to pass a regulatory statute.*"

The extreme judicial view was otherwise unanimously expressed by the United States Circuit Court of Appeals for the Seventh Circuit, in the Indiana coal case, supra, on the 2nd day of October, 1920, as follows:

> "The Legislature was the unrestricted agent of the people. * * * And it (the police power to fix prices) is as wide as any conceivable sovereignty can be. It is absolutely as wide—laying aside for the moment the part of the absolute sovereignty that has been made over to the federal government—as that of the Arab Sheik, sitting out in front of his tent, controlling the actions of his tribal members."

Fortunately these utterances are, we think, quite unnecessary for the instant decisions. Indeed, we are not sure each decision may not be reconciled with the true doctrine we have exhibited. In the Supreme Court the New York Rent Case was, by the majority, so reconciled.

These expressions, legislative and judicial, are out of the atmosphere of the World War fixing in some quarters supposed to be sustainable under the constitutional war power, and under the licensing system employed by the War Industries Board, by the War Trade Board, and by the Food Ad-

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13. Holter Hardware Co. *v.* Boyle, 263 Fed. 134.
14. Marcus Brown Holding Co. *v.* Feldman, 269 Fed. 306.

ministration, aided by the then war spirit of the people. But that is a subject for another paper.

In peace time we think the assertion, that:

> "any business is affected with a public interest as soon as the electorate become sufficiently interested in it to pass a regulatory statute"

is, under our Constitution, both state and federal, fundamentally unsound.

We do not extremely covet an Arab Sheik government nor do we think we have one. We think the American Constitutions, state and federal, limit the "Legislative Power to Fix Prices", in times of peace, by the principles we have noticed as announced by the United States Supreme Court. I for one cannot believe the Bench and Bar, as a whole, intend, in these troublous times, or in any other times, to set the country adrift at sea on a legislative price fixing ship without compass or rudder or anchor, other than the words "welfare", "convenience" and "prosperity"; but, on the contrary, I do most sincerely believe the Bench and Bar, as a whole, have kept and will continue to keep our legislative price fixing barge securely anchored to property and business virtually monopolistic.